

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**CASSANDRA JIMMIE, JARED MARTIN,
as Parents, Legal Guardians and Next Friends
of Jarel Martin, a minor child,**

Plaintiffs,

v.

CIV NO. 05-15 LH/DJS

UNITED STATES OF AMERICA,

RECOMMENDATION

THIS MATTER comes before the Court *sua sponte*. On April 5, 2006, a hearing was held regarding the fairness and adequacy of the proposed settlement of this case. The Court heard presentations by Plaintiff's counsel, Defendants' counsel, and the minor plaintiff's Guardian *Ad Litem*, Rachel Higgins, Esq..

This case is a suit pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.* Plaintiffs claim that Defendant committed medical malpractice in the examination, diagnosis, and treatment of Jarel Martin at the Crownpoint IHS hospital. Defendant denied liability. Jarel Martin required surgery to remove a foreign object lodged in his trachea after several months of treatment which failed to identify the presence of the object.

The Guardian *Ad Litem* reviewed submissions of counsel and consulted with Plaintiffs Cassandra Jimmie and Jared Martin, who appear in this action as their child's parents and next friends. Plaintiffs were present at the hearing regarding the settlement. The sum agreed upon for settlement will be divided, with one-quarter going to Plaintiff's counsel for attorney's fees. The

remainder of the sum, less costs incurred in pursuing this action, will be placed into a trust account maintained by a third party trustee. The trustee will manage the monies for a minimal monthly fee and disburse them as necessary for Jarel Martin's medical and special needs.

The Court finds that the proposed settlement will result in a substantial sum being paid to the minor child for whom Plaintiffs brought this action. Review of the file and of the pleadings, this Court finds that the sum to be paid Plaintiffs' counsel is reasonable and appropriate for the nature of the case and the work performed in pursuing the action. Counsel's efforts were instrumental in obtaining a substantial settlement. Of considerable significance is that fact that many of the efforts made by Plaintiffs' counsel in this action also applied to a parallel action pursued against state actors in New Mexico District Court. Counsel and the guardian ad litem informed the Court that the state court action also resulted in a substantial settlement which, less attorney's fees, will be placed in an annuity for the benefit of Jarel Martin. The settlements will address the child's needs, including continued medical care.

The Court also finds that the sum to be paid the guardian ad litem, approximately \$1,000, is reasonable given the extent of the review required in this case and the actions undertaken by the guardian.

IT IS THEREFORE RECOMMENDED that the Court approve the terms of the settlement and enter an order dismissing this action upon its terms.



DON J. SVET
UNITED STATES MAGISTRATE JUDGE